

CITY OF MIDLAND, TEXAS
CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT for employment as the City Manager of the City of Midland (the “*Agreement*”) is made and effective the **31st day of July, 2023**, by and between the **CITY OF MIDLAND, TEXAS**, a home-rule municipality (the “*City*”), and **TOMAS GONZALEZ** (the “*City Manager*”), to establish and set forth the terms and conditions of the employment of the City Manager.

WITNESSETH:

WHEREAS, the City, acting by and through the City Council (the “*Council*”), desires to employ the services of the City Manager pursuant to the terms, conditions, and provisions of this Agreement; and

WHEREAS, it is the desire of the Council to provide compensation and benefits, to establish conditions of employment for, and to set the working conditions of the City Manager as provided in this Agreement; and

WHEREAS, except as otherwise specifically provided herein, the City Manager shall have and be eligible for the same benefits as are provided to all employees of the City, subject to the terms, conditions, and eligibility requirements of such benefits; and

WHEREAS, the City Manager has agreed to accept employment as the City Manager of the City of Midland, subject to the terms, conditions, and provisions agreed to and set forth in this Agreement;

NOW, THEREFORE, in consideration of the City Manager accepting an agreement with the City, and other good and valuable consideration, including the mutual covenants herein contained, the City and the City Manager hereby contract, covenant, and agree as follows:

- 1. Duties.** The City hereby employs the City Manager as the City Manager of the City of Midland to perform the duties and functions specified in the City Charter and Municipal Code, as each may be amended from time to time, and other specific duties as assigned by the Council or as contained in this Agreement. The City Manager’s job description is attached hereto as **Exhibit A** and incorporated herein for all purposes.
- 2. Term.** The employment of the City Manager shall commence on the 31st day of July, 2023 (the “*Effective Date*”), and shall be for a term of four years (the “*Term*”). The City Manager’s employment with the City shall be on an “at-will” basis, which means that the City Manager’s employment is terminable by either the City or the City Manager for any reason or no reason, with or without Cause (as defined herein).
- 3. Salary.** The City agrees to pay the City Manager a base salary, which shall initially be the annualized amount of \$350,000.00 (the “*Base Salary*”). The Base Salary shall be payable in installments at the same time as other employees of the City are paid. In addition, the City agrees to increase the Base Salary and/or benefits of the City Manager in such amounts and to such extent as the Council may determine in its sole discretion. At no time, however, shall the Base Salary be adjusted by the Council to an annualized amount less than \$350,000.00. The City Manager shall

be entitled to the same longevity pay as are all other City employees in accordance with the City's Personnel Policies.

4. Car Allowance. The City agrees to pay to the City Manager a monthly car allowance in the annualized amount of \$9,000.00 for the City Manager's use of the City Manager's privately-owned motor vehicle, which payment is in lieu of reimbursement for mileage and all other expenses associated with the operation of said motor vehicle. The City Manager shall be responsible for paying for all insurance required by law for the operation of said motor vehicle. The City Manager shall be responsible for the purchase, fueling, operation, maintenance, repair, and replacement of said motor vehicle.

5. Disability and Retirement Benefits. The City Manager shall be covered and governed by the same retirement system as are all other City employees. Retirement contributions shall be paid as required by the City's retirement system plan documents and subject to the terms and conditions of such plan and plan documents. Nothing in this Agreement shall preclude the City or any administrator of such plan from terminating or amending any such plan or program so as to eliminate, reduce, or otherwise change any benefit thereunder, subject to the terms of such plan or program and applicable law.

6. Insurance. The City agrees to provide hospitalization, comprehensive medical and life insurance for the City Manager and the City Manager's dependents equal to that provided to all employees of the City, and to pay the premiums thereon on the same basis as for other employees of the City. The City further agrees to coordinate its insurance plan with the City Manager's current insurance plan and coverage, with the intent, and to guarantee, that no exclusion or break in coverage in health, disability or life insurance coverage occurs for the City Manager or the City Manager's dependents, if applicable. Nothing in this Agreement shall preclude the City or any administrator of such insurance plans from terminating or amending any such plan or program so as to eliminate, reduce, or otherwise change any benefit thereunder, subject to the terms of such plan or program and applicable law.

7. Leave Benefits. All provisions of the rules and regulations of the City applicable to sick leave and vacation leave, as amended, shall apply to the City Manager as such apply to all other employees of the City except as otherwise provided in this Agreement. On the Effective Date, and on each anniversary of the Effective Date during the Term, the City Manager shall be granted 120 hours of vacation leave and 120 hours of sick leave, which the City Manager may use before the next anniversary of the Effective Date. The City Manager's vacation leave and sick leave shall not carry over from year to year. Upon separation or termination, any unused vacation leave and sick leave shall be paid to the City Manager in accordance with the terms of this Agreement. If the City adopts a policy under which the City's vacation leave program and sick leave program are converted into a paid time off program, all references in this Agreement to vacation leave and sick leave shall be deemed to be references to paid time off.

8. Other Benefits.

8.1. Relocation Assistance. The City shall reimburse the City Manager for the reasonable expenses of moving the City Manager, the City Manager's family, and the City Manager's personal property from the City Manager's current residence to the City as provided herein, in accordance with the City of Midland Relocation Assistance Policy. The City Manager shall obtain

and submit to the City quotes from three moving businesses. The City shall reimburse the City Manager for the reasonable moving expenses associated with the lowest quote within 30 days following the City Manager's submission to the City of valid receipts reflecting the City Manager's payment of the reasonable moving expenses.

8.2. Temporary Housing Assistance. The City shall reimburse the City Manager for temporary housing expenses while the City Manager seeks a permanent residence as provided herein. The City Manager shall submit an itemized list of such expenses on not less than a monthly basis to be eligible for reimbursement, and within 30 days of such submission, the City shall reimburse the City Manager for such expenses in an amount not to exceed \$1,500.00 per month. The City Manager shall be eligible to receive such reimbursement each month until one of the following events occurs: (i) six months have elapsed since the Effective Date; or (ii) the City Manager has closed on the purchase of a house.

9. Annual Physical. Once each year during the Term, the City Manager may undergo a physical examination performed by a licensed physician selected by the City Manager. The City shall reimburse the City Manager for the cost of each such examination in an amount not to exceed \$7,500.00 plus the City Manager's reasonable travel expenses associated with the examination within 30 days following the City Manager's submission to the City of sufficient documentation reflecting the City Manager's payment of the cost of such examination and reasonable travel expenses, such as the City Manager's health insurance explanation of benefits, valid receipts, or other financial records that accurately reflect the City Manager's out-of-pocket payments.

10. Consulting. The City Manager is hereby authorized to perform outside consulting services; provided, however, that the City Manager shall not perform any outside consulting services that conflict with or otherwise interfere with the City Manager's duties to the City. In the event that a conflict arises during the performance of outside consulting services, the City Manager shall promptly (i) withdraw from performing the services giving rise to the conflict and (ii) disclose the conflict to the Mayor. The City Manager shall not use the City's information, personal property, real property, labor, or other resources for purposes that are in any way related to the City Manager's outside consulting services. When performing outside consulting services, the City Manager shall not make any statement or take any action that would cause a reasonable person to believe that the City Manager is acting on behalf of the City. On the Effective Date, the City Manager shall provide to the City Council (i) a list of the City Manager's current clients for whom he provides outside consulting services and (ii) a list of each person or entity with whom the City Manager has a business relationship. Upon engaging a new client or beginning a new business relationship, the City Manager shall promptly notify the City Council in writing of the identity of the client or person or entity with whom the City Manager has begun a business relationship.

11. Professional and Civic Development. The City agrees to budget and pay for the civic and professional membership dues and subscriptions of the City Manager as necessary for the City Manager's continuation and participation in local, regional, and state associations that are necessary and desirable for the City Manager's continued professional growth and advancement, and for the good of the City as the Council deems appropriate. Developing and maintaining professional association contacts and standing provides the City access to valuable resources, and the reasonable participation and related travel by the City Manager as provided for in the annual budget will be a part of the City Manager's duties.

12. Business Expenses. Certain expenses of a non-personal and job-related nature will necessarily be incurred by the City Manager in the performance of the City Manager's duties. The City will pay or reimburse such reasonable business expenses in accordance with applicable City policies then in effect, and the City is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits. Additionally, the City will pay the cost of any bond required by the City in connection with the employment of the City Manager.

13. Hours of Work. It is recognized that the City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside of normal business hours to the business of the City. The City Manager acknowledges that the proper performance of the duties of the City Manager will require the City Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The City Manager agrees to devote such additional time as is necessary for the full and proper performance of the City Manager's duties and that the compensation herein provided includes compensation for the performance of all such services. Provided, however, the City intends that reasonable time off be permitted for the City Manager, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the City of Midland. The City Manager shall devote full time and effort to the performance of the duties of the City Manager and shall remain exclusively employed by the City while this Agreement is in effect.

14. Indemnification. To the extent permitted by law, the City does hereby agree to defend, hold harmless, and indemnify the City Manager from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against the City Manager, provided that the basis of any such demand, claim, suit, action, judgment, expenses and attorneys' fees arose from an act or omission of the City Manager within the course and scope of the City Manager's employment with the City; excluding, however, any such demand, claim, suit, action, judgment, expenses and attorneys' fees for those claims or any causes of action where it is determined that the City Manager committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith; and further excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the City or by the City Manager. The selection of the City Manager's legal counsel shall be with the mutual agreement of the City Manager and the City if such legal counsel is not also the City's legal counsel. A legal defense may be provided through insurance coverage, in which case the City Manager's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. The provisions of this Section shall survive the termination, expiration or other end of this Agreement and the City Manager's employment with the City.

15. Evaluation Process. The Council shall review the City Manager's job performance at least once annually. This annual evaluation shall be based on the strategic plan, vision, mission, and values. Changes to the evaluation process shall be mutually agreed to by the Council and the City Manager. Notwithstanding the foregoing, and for the avoidance of doubt, the Council may, in its sole discretion, conduct additional evaluations and reviews of the City Manager's job performance from time to time as the Council deems necessary and appropriate.

16. Termination and Benefits. The parties acknowledge and agree that the following terms and conditions shall govern the termination of this Agreement and separation benefits.

16.1 Definitions. When used herein, the following capitalized terms shall have the meanings set forth below.

a. “*Cause*” means:

- (i) Any act or omission of willful, knowing, grossly negligent, or negligent conduct in violation of any significant provision of this Agreement; any act or omission of willful, knowing, grossly negligent, or negligent conduct in violation of any significant duty or significant obligation required to be performed by the City Manager under this Agreement; or any act or omission of willful, knowing, grossly negligent, or negligent conduct in violation of any rule, regulation, policy or ordinance of the City, or a law of the United States or the State of Texas;
- (ii) Indictment for a felony;
- (iii) Final conviction of a misdemeanor involving moral turpitude, which shall mean only a misdemeanor involving dishonesty, fraud, or deceit; or
- (iv) Misconduct or violation of a City policy, rule, or regulation that by its nature has an adverse effect on the City, the confidence of the public in the integrity of the City, or the relationship of the City Manager and other employees (a “*Policy Violation*”). The determination of whether conduct constitutes a Policy Violation shall be in the sole discretion of the Council.

b. “*Unilateral Severance*” means a vote of not less than four (4) Council members, at a duly called Council meeting, to terminate the City Manager’s employment with the City and this Agreement, for any or no reason except for Cause.

16.2 Termination Events. This Agreement shall terminate only upon any of the following:

- a. Unilateral Severance;
- b. Unilateral Severance for Cause;
- c. Mutual written agreement; or
- d. The retirement, resignation, or death of the City Manager.

16.3 Separation Benefits. The City agrees to provide the City Manager separation benefits in accordance with the terms of an applicable termination event as set forth below.

- a. Unilateral Severance.** Upon the termination of this Agreement pursuant to Section 16.2.a, the City Manager shall be entitled to receive the following:
- (i) An amount equal to twelve (12) months of the City Manager's then-current Base Salary; and
 - (ii) The value of any accrued but unused sick leave and vacation leave, computed on an hourly basis.
- b. Unilateral Severance for Cause.** Upon the termination of this Agreement pursuant to Section 16.2.b, the City Manager shall be entitled to receive the following:
- (i) An amount equal to six (6) months of the City Manager's then-current Base Salary; and
 - (ii) The value of any accrued but unused sick leave and vacation leave, computed on an hourly basis.
- c. Mutual Written Agreement.** Upon the termination of this Agreement pursuant to Section 16.2.c, the terms and conditions of the parties' mutual written agreement shall govern the separation benefits provided by the City to the City Manager.

Notwithstanding any contrary provision contained herein, and for the avoidance of doubt, the City Manager acknowledges and agrees that the Term of this Agreement is not guaranteed and separation benefits, if any, are expressly limited to the terms and conditions of this Section 16.3.

16.4 Release. CONDITIONED UPON THE CITY FULFILLING ITS OBLIGATIONS UNDER THIS AGREEMENT, THE CITY MANAGER WAIVES AND RELEASES THE CITY MANAGER'S RIGHT TO CONTINUED EMPLOYMENT WITH THE CITY AND HEREBY WAIVES, RELEASES AND AGREES TO HOLD THE CITY OF MIDLAND, ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, INSURERS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS THE CITY MANAGER MAY HAVE NOW OR ACQUIRE IN THE FUTURE RELATED TO THE TERMINATION OF THIS EMPLOYMENT AGREEMENT OR ANY OTHER MATTER ARISING FROM OR RELATED TO THIS EMPLOYMENT AGREEMENT. THE CITY MANAGER FURTHER AGREES TO EXECUTE A RELEASE AND WAIVER AGREEMENT WITH THE CITY, THE FORM OF WHICH IS ATTACHED HERETO AS EXHIBIT B AND INCORPORATED HEREIN FOR ALL PURPOSES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IF THE CITY MANAGER DOES NOT EXECUTE THE RELEASE AND WAIVER AGREEMENT PURSUANT TO THIS SECTION, THE CITY SHALL HAVE NO OBLIGATION TO PROVIDE THE CITY MANAGER ANY SEPARATION BENEFITS HEREUNDER, AND THE CITY MANAGER WAIVES THE RIGHT TO COLLECT THE SAME.

17. Notices. All notices, demands, and other writings may be delivered by either party to the other by United States Mail, by a reliable commercial courier, or in person at the following addresses:

City: Mayor, City of Midland, 300 N. Loraine St., Midland, Texas 79701.

City Manager: The address on file in the City's Administrative Services Department.

18. General Provisions.

a. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

b. Severability. In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

c. Entire Agreement. This Agreement incorporates all the agreements, covenants and understandings between the City and the City Manager concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

d. Amendment. This Agreement shall not be modified or amended except by a written instrument executed by the City Manager and the duly authorized representative of the Council. The duly authorized representative of the Council is the Mayor.

e. Effective Date. This Agreement shall be and become in full force and effect as of the date first written above upon the execution hereof by the Mayor of the City and the City Manager.

f. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

g. Construction of Agreement. Whenever possible, the words and phrases used in this Agreement shall be given their plain and ordinary meaning.

19. Conflict with Policies. If a conflict exists between this Agreement and the rules, regulations, policies, resolutions, or ordinances of the City (including, but not limited to, the City's Personnel Policies, as amended), the provisions of this Agreement shall take precedence, and control and govern any such conflict.

IN WITNESS WHEREOF, the City and the City Manager have executed this Agreement effective as of the date first written above.

CITY OF MIDLAND, TEXAS

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

CITY MANAGER

Tomas Gonzalez

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SUBSCRIBED AND SWORN TO before me by Tomas Gonzalez, on this ____ day of _____, 2023.

Notary Public in and for the State of Texas

EXHIBIT A

Job Description

**CITY OF MIDLAND -- JOB DESCRIPTION
CITY MANAGER
TITLE 00150, EXEMPT**



SCOPE OF WORK:

Serves as Administrative Officer for the City of Midland under broad direction of the City Council. Responsible for planning, organizing, and directing all aspects of municipal government operations.

BUDGETARY RESPONSIBILITIES:

Oversees preparation of the annual budget and presents it to the City Council for approval. Administers the budget following approval.

ESSENTIAL JOB DUTIES:

- Advises the City Council regarding the financial condition, administrative activities, and future needs of the City. Makes recommendations relating to such.
- Develops, plans, and implements goals and objectives to enhance areas of responsibility.
- Attends City Council meetings and other Board and Commission meetings as required.
- Serves as a liaison between citizens, employees, and City Council.
- Supervises and directs department heads regarding completion of related projects.
- Selects and trains personnel reporting directly to the City Manager.
- Coordinates assignments and provides direction for Assistant City Managers.
- Responds to citizen inquiries and resolves conflict when necessary.
- Prepares and presents required reports to the Mayor and City Council.
- Performs other related duties as required.

PHYSICAL AND ENVIRONMENTAL CONDITIONS:

Ability to sit, stand, and transport self from building to building.

REQUIRED CONTACTS:

Ability to effectively communicate with Mayor, City Council, Boards and Commissions, citizens of the City of Midland, employees, and special groups requiring information as needed.

REQUIRED QUALIFICATIONS:

Knowledge, Abilities and Skills

Requires strong organizational and budgeting aptitude, as well as project coordination experience. Must demonstrate strong management skills and understanding of public personnel and finance administration. Ability to communicate effectively both orally and in writing. Ability to analyze complex problems and identify alternative solutions. Ability to use personal computer.

Minimum Education, Experience and Certification

Requires Bachelor's degree in Public Administration or related field and at least seven years of senior management experience at a departmental level or higher. Valid Texas Drivers' License required.

EXHIBIT B

Form of Release and Waiver Agreement

NOTICE OF RIGHTS: THIS AGREEMENT CONTAINS A TOTAL AND COMPLETE RELEASE AND WAIVER OF YOUR RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT AS WELL AS OTHER FEDERAL, STATE, AND LOCAL LAWS PROTECTING EMPLOYEE RIGHTS. IF YOU SIGN THIS AGREEMENT, YOU ARE WAIVING ALL OF YOUR RIGHTS TO ASSERT ANY CLAIMS UNDER THESE LAWS. PLEASE READ THIS AGREEMENT CAREFULLY AND, IF YOU WISH, SEEK THE ADVICE OF AN ATTORNEY REGARDING THE LEGAL EFFECT OF SIGNING THIS AGREEMENT.

RELEASE AND WAIVER AGREEMENT

I.

Tomas Gonzalez (“*Gonzalez*”) and the City of Midland, Texas (the “*City*”) hereby acknowledge and agree that Gonzalez, having separated from employment with the City as City Manager effective July 31, 2023, has received payment in full of all separation benefits in accordance with that certain City Manager Employment Agreement, dated effective _____, 2023 (the “*Employment Agreement*”).

II.

NOW, UPON RECEIPT OF SUCH BENEFITS, AND OTHER GOOD AND VALUABLE CONSIDERATION, GONZALEZ HEREBY REAFFIRMS THE RELEASES AND WAIVERS SET FORTH IN THE EMPLOYMENT AGREEMENT, AND AGREES NOT TO INSTITUTE OR HAVE INSTITUTED ON GONZALEZ’S BEHALF CLAIMS, CAUSES OF ACTION OR LAWSUITS OF ANY NATURE AGAINST THE CITY, ITS EMPLOYEES, COUNCIL MEMBERS, OFFICIALS, OR AGENTS, EITHER INDIVIDUALLY OR IN THEIR OFFICIAL CAPACITY, WITH RESPECT TO ANY VIOLATIONS OF FEDERAL OR STATE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO, ANY CLAIMS, CAUSES OF ACTIONS OR SUITS WHICH MIGHT HAVE BEEN ALLEGED AS A RESULT OF EVENTS OCCURRING DURING GONZALEZ’S EMPLOYMENT WITH CITY.

ADDITIONALLY, FOR GONZALEZ AND GONZALEZ’S HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, AND LEGAL REPRESENTATIVES, GONZALEZ HEREBY FULLY, FINALLY AND COMPLETELY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE CITY, ITS EMPLOYEES, COUNCIL MEMBERS, OFFICIALS, AND AGENTS, BOTH INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, CAUSES OF ACTION OR SUITS OF ANY KIND WHATSOEVER THAT GONZALEZ HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO COMPENSATORY DAMAGES (INCLUDING, BUT NOT LIMITED TO, BACK PAY, FRONT PAY, OVERTIME PAY, OR LOST FUTURE EMPLOYMENT BENEFITS), PUNITIVE DAMAGES, BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, THE CITY’S NEGLIGENCE, ATTORNEY FEES, COURT COSTS, MENTAL PAIN AND ANGUISH, DAMAGE TO REPUTATION, SLANDER, DEFAMATION, OR OTHER PERSONAL INJURY, ALL CLAIMS ARISING FROM COMMON LAW, THE UNITED STATES AND TEXAS CONSTITUTIONS, FEDERAL OR STATE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AS AMENDED, THE OLDER WORKERS BENEFITS PROTECTION ACT, AS AMENDED, THE FAIR LABOR STANDARDS ACT, AS AMENDED, THE FAMILY MEDICAL LEAVE ACT, AS AMENDED, THE

CIVIL RIGHTS ACT OF 1991, AS AMENDED, TEXAS LABOR CODE § 451.001 ET SEQ., THE AMERICANS WITH DISABILITIES ACT, AS AMENDED, AND ANY AND ALL SIMILAR FEDERAL OR TEXAS STATUTES WHICH PROHIBIT DISCRIMINATION ON THE BASIS OF RACE, GENDER, AGE, NATIONAL ORIGIN, DISABILITY, OR RELATE TO THE PAYMENT OF OVERTIME, AND TEXAS GOVERNMENT CODE § 554.001 ET SEQ.

GONZALEZ ACKNOWLEDGES THAT THIS AGREEMENT DOES NOT PROHIBIT GONZALEZ OR ANY THIRD PARTY FROM FILING A COMPLAINT OF ALLEGED DISCRIMINATION WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE TEXAS HUMAN RIGHTS COMMISSION, OR THE TEXAS WORKFORCE COMMISSION BUT DOES, HOWEVER, BAR GONZALEZ AND GONZALEZ’S HEIRS, EXECUTORS, LEGAL REPRESENTATIVES, AND ASSIGNS FROM RECEIVING ANY RECOVERY OF ANY NATURE, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, RESULTING DIRECTLY OR INDIRECTLY FROM THE FILING OF SUCH COMPLAINT.

III.

Gonzalez hereby represents and agrees that Gonzalez knowingly and voluntarily enters into this Release and Waiver Agreement with the purpose of releasing and waiving any and all claims under the Age Discrimination in Employment Act of 1967 (“*ADEA*”), as amended, and the Older Workers Benefit Protection Act (“*OWBPA*”), as amended, and Gonzalez acknowledges and agrees that:

- a. this agreement is worded in an understandable way;
- b. any rights or claims arising under the *ADEA* and *OWBPA* are waived;
- c. claims under the *ADEA* and *OWBPA* that may arise after the date of this agreement are not waived;
- d. the rights and claims waived in this agreement are in exchange for additional consideration over and above anything to which Gonzalez was already entitled;
- e. Gonzalez has been advised in writing to consult with an attorney prior to executing this agreement, and has had an opportunity to do so; and
- f. Gonzalez has been given twenty-one (21) days, if desired, to consider this agreement and understands that Gonzalez may revoke Gonzalez’s release and waiver of any *ADEA* or *OWBPA* claims covered by this agreement in the seven (7) day period following Gonzalez’s execution of this agreement.

IV.

Gonzalez represents that Gonzalez has not assigned or transferred, or attempted to assign or transfer, to any person or entity, any of the claims hereby released.

V.

In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, but this

agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

VI.

This agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto. Regardless of which party initially drafted this agreement, it shall be construed and enforced as a mutually prepared agreement.

VII.

This agreement incorporates all the agreements, covenants and understandings between the City and Gonzalez concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

IN WITNESS WHEREOF, the City and the City Manager have executed this Agreement effective as of ____ day of _____, 20____.

CITY OF MIDLAND, TEXAS

By: _____
_____, Mayor

ATTEST:

_____, City Secretary

TOMAS GONZALEZ

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

SUBSCRIBED AND SWORN TO before me by Tomas Gonzalez, on this ____ day of _____, 20____.

Notary Public in and for the State of Texas